Supreme Court, U.S.
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No. 93-975

IN THE
Supreme Court of the United States
OCTOBER TERM, 1993

ROBERT F. FULLER AND RIPLEY R. CLICK,
Petitioners,

v.

FMC CORP. TERMINATED VESTED AND RETIRED SALARIED EMPLOYEES' RETIREMENT PLAN, FMC CORP. SEVERANCE PAY PLAN, FMC CORP.,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

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RESPONDENTS' BRIEF IN OPPOSITION

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COUNTERSTATEMENT OF QUESTIONS PRESENTED

Whether the court of appeals correctly held that under FMC Corporation's severance pay plan FMC did not owe severance pay to two former employees of an FMC facility that was sold as a going concern where the two former employees continued working for the purchasing entity.

Whether the court of appeals correctly held that the Summary Plan Description of an FMC employee benefit plan was not ambiguous and did not give the claimants the right to take early retirement *from* FMC where the claimants had not reached early retirement age before they stopped working for FMC.

LISTING OF AFFILIATES PURSUANT TO RULE 29.1

Pursuant to Rule 29.1, respondent FMC Corporation discloses the following information:

1. SUBSIDIARIES

   FMC Gold
   CBV-Industria Mecanica, S.A. (Brazil)

2. JOINT VENTURES WITH PUBLICLY TRADED PARTNERS

   Natural Product Sciences, Inc. (Pfizer, Inc.)
   SeparasSystems (E.I. Du Pont de Nemours and Co.)
   Valisys Corporation (IBM)

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REASONS FOR DENYING THE WRIT

The unanimous opinion below involved nothing more than the construction of a particular company's severance pay policy and the interpretation of that company's summary description of its pension plan. No violation of the Constitution is claimed. No conflict of authority among the courts of appeals is alleged. No issue of nationwide import is presented. No departure from the accepted and usual course of judicial procedure is asserted. No important question of federal law that should be settled by this Court is mentioned. This is nothing more than a factbound petition on the part of dissatisfied litigants who

fully aired their arguments at the court of appeals and lost. The petition is bereft of anything that would suggest any "special and important reasons" for this Court to review this case.

I. THE SEVERANCE PAY CLAIM DOES NOT MERIT REVIEW

A. Petitioners Were Not Laid Off

The Fourth Circuit's rejection of petitioners' claim for severance pay from FMC after petitioners had worked for several years for the entity that purchased their FMC unit as a going concern was both routine and entirely correct. Under FMC's policy, severance pay was available only where a worker was "laid off due to the closing of a plant or location." Pet. App. 7a. Here, petitioners were never laid off. One day they worked for FMC, the next day they worked for the corporation that purchased the business as a going concern from FMC. The plant or location did not close; it simply changed ownership. The court of appeals noted that—in accordance with FMC's arrangement for its former employees upon the sale of the plant at issue—"at the end of the day, the employees formally ended work with FMC. The next day the former FMC employees began with Agri-Tech at the same jobs, with the same responsibilities, and at the same salaries." Pet. App. 4a.

B. The Severance Pay Policy Was Consistently Administered

Based upon "uncontradicted" evidence that FMC's policy was to pay severance only where employees were actually out of work (and not where they merely took up other employment that had been arranged by FMC), Pet. App. 4a, 7a, the court of appeals ruled that FMC had no obligation to pay petitioners severance benefits. Pet. App. 8a. The Fourth Circuit pointed out that FMC's denial of severance pay in the instant case was altogether consistent with FMC's disposition of severance pay claims

in at least six other litigated cases. Pet. App. 7a-8a. There was nothing new or different about what happened in this case.

C. Petitioners' Argument Is Unfounded

Significantly, petitioners, in challenging the Fourth Circuit's decision, do not contest that court's reliance on extrinsic evidence to interpret the plan. Nor do they challenge the fact that the extrinsic evidence is "uncontradicted" or assert that any similarly situated FMC employee received severance benefits. The petition is based instead on the unfounded contention that even if the Woodstock *plant* did not close, a sale of the very same facility resulted in the closing of an FMC *location*. Nothing about petitioners' severance pay claims warrants review by this Court.

II. THE PENSION BENEFIT CLAIM DOES NOT MERIT REVIEW

A. The Summary Plan Description Was Not Ambiguous

The Fourth Circuit's rejection of petitioners' construction of FMC's Summary Plan Description (SPD) is similarly inappropriate for certiorari review. Petitioners contended that, under the language of the SPD, they were entitled to claim "early retirement" benefits as opposed to a lower "termination benefit." That SPD described two types of benefits: one for employees who retire after reaching age 55 with at least ten years service, and a lower one for employees who "leave FMC" before reaching age 55. *See* Pet. App. 10a (quoting the SPD).

The court of appeals examined the provisions of the SPD and found them "neither confusing nor ambiguous." Pet. App. 12a. In so ruling, the Fourth Circuit plainly rejected petitioners' contention that the SPD contained unwritten exceptions to what was required to secure early

retirement benefits. The court of appeals correctly observed that an employee was required to have reached age 55 in the employ of FMC before he could claim the higher "early retirement" benefit. Petitioners, on the other hand, had ceased to be employed by FMC prior to age 55, and were—as the Fourth Circuit ruled—entitled only to the lower "termination benefit," which they were paid. Pet. App. 12a.

Further, the court of appeals set forth a separate independent basis for holding that petitioners are not entitled to increased pension benefits: there was no reliance and resulting prejudice. Pet. App. 12a. Petitioners are wrong to contend that the Fourth Circuit ignored their facts about reliance. *See* Pet. App. 12.

B. Petitioners Refuse To Read The SPD As A Whole

Petitioners' approach throughout this litigation has been to ignore the SPD as a whole and to focus piecemeal upon language they found to their liking. But the court of appeals looked at the whole SPD, saw that it clearly described both the early retirement benefit and the "termination" benefit, saw that it distinguished between the election-to-retire and the election-to-begin-benefit payments, and ruled correctly that the SPD was unambiguous. The Fourth Circuit held, in effect, that if the petitioners had read the SPD as normal human beings, without trying to distort it for litigation purposes, they would have seen right away that their early retirement claim made no sense. In short, the court of appeals ruled that the petitioners' reading of the SPD was unreasonable.

C. Petitioners Are Trying To Revive An Abandoned Issue

Finally, on page 12 of their brief, petitioners argue that they were promised early retirement benefits by FMC. But, in the proceedings before the district court, FMC showed that petitioners had initially been sent *errone-*

ous "Vested Benefit Statements." Significantly, these erroneous statements were sent to petitioners *after* they had been terminated and those statements were corrected *before* either of the petitioners elected to begin retirement benefit payments. In light of FMC's documentation, the District Court rejected the contention that petitioners were entitled to additional benefits on the basis of the incorrect statements. Significantly, petitioners never appealed that ruling. Now that the case has been fully reviewed by the court of appeals and petitioners have lost, petitioners are not entitled to reassert this abandoned claim.

CONCLUSION

For the foregoing reasons, the petition should be denied.

Respectfully submitted,

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